

## REMARKS

Claims 18-60 are pending in the application. Claims 26-60 are new.

The invention set forth in the pending claims is for the same invention as claimed in U.S. Patent Application No. 09/999,210 to Humes et al. ("the Humes application") as published in U.S. Patent Publication No. US 2002/0090388 A1. Applicant submits herewith a Request for Interference with the Humes application pursuant to 37 C.F.R. §1.604.

New claims 26-69 are substantially copied from as-published claims 1-3, 5-7, 10, 12-16, 18-26, 28-31, 34 and 37-43 of the Humes application. The Humes application was filed on November 30, 2001, and claims priority to U.S. provisional patent application Serial No. 60/250,746, filed on December 1, 2000. The present application has an effective filing date of August 25, 2000, more than three months before the effective filing date of the Humes application.

Applicant respectfully submits that new claims 26-60 are fully supported in applicant's as-filed specification. Applicant respectfully requests an interference with the Humes application be declared.

### Request Under 37 C.F.R. § 1.604 For Interference With Application

#### I. Identification of Applications (37 C.F.R. § 1.604 (a) (2), (b))

Pursuant to 37 C.F.R. § 1.604, applicant hereby requests that an interference be declared between the present application and U.S. Patent Application No. 09/999,210 ("the Humes application"). The present application was filed April 8, 2004, and is a divisional application of U.S. Patent Application No. 09/648,257, filed on August 25, 2000.

II. Presentation of Proposed Counts  
(37 C.F.R. § 1.604(a) (1))

Applicant respectfully presents the following proposed counts:

Count 1

An intravascular device for delivering a bioactive substance into systemic circulation of an animal, the device comprising:

(a) an anchor immobilizable to an inner wall of an intact blood vessel which, when immobilized in the blood vessel, permits blood in the vessel to pass therethrough; and

(b) a reservoir containing a bioactive substance, which when introduced into the blood vessel is retained by the anchor and releases the bioactive substance into blood passing the reservoir.

Count 2

A method of introducing into a blood vessel a device for delivering a bioactive substance directly into systemic circulation of an animal, the method comprising the steps of:

(a) immobilizing an anchor to an inner wall of an intact blood vessel, which when immobilized permits blood in the vessel to pass therethrough;

(b) introducing into the blood vessel a reservoir containing a bioactive substance, such that when introduced into the blood vessel the reservoir releases the bioactive substance into blood passing the reservoir; and

(c) permitting the reservoir to be retained in the blood vessel by the anchor.

Proposed Count 1 is identical to applicant's claim 26; proposed Count 2 is identical to applicant's claim 42.

III. Identification of Applicant's Claims  
Corresponding to the Proposed Counts  
(37 C.F.R. § 1.604 (a) (1))

Applicant submits that claims 26-41 and 47-60 correspond to proposed count 1 and that claims 42-46 correspond to proposed count 2.

IV. Identification of the Humes Application  
Claims Corresponding to the Proposed Counts  
(37 C.F.R. § 1.604 (a) (2))

Applicant submits that claims 1-3, 5-7, 10, 12-16, 18-20, 26, 28-32, 34 and 37-43 of the Humes application should be designated as corresponding to proposed count 1 and that claims 21-25 of the Humes application should be designated as corresponding to proposed count 2.

V. Why an Interference Should Be Declared  
(37 C.F.R. § 1.604 (a) (3))

Newly added claims 26-60 of this application are substantially identical to above-identified claims of the Humes application. New claims 26-60 are fully supported by the disclosure of the present application.

Applicant's specification discloses with respect to FIGS. 3A and 3B an apparatus 20 configured to deliver a bioactive substance to a patient's bloodstream. The apparatus comprises eluting material 22 comprising swellable pellet 34 that is disposed within anchor 24. Upon exposure to blood, pellet 34 swells such that it may come into contact with a substantial portion of blood flowing through the patient's blood vessel. Anchor 24 comprises a collapsible structure having a plurality of segments 28 structured to suspend pellet 34 within the blood vessel. Similar structure is disclosed

and claimed in the Humes application. Referring to FIG. 3A of the Humes application, an apparatus is disclosed comprising drug eluting reservoir 20 adapted to release drugs into blood passing through a patient's blood vessel. Drug eluting reservoir is suspended within the blood vessel using anchor 10, which comprises a collapsible structure having a plurality of segments 16 (FIG. 4A).

Applicant invented the subject matter of the proposed counts prior to Humes. Accordingly, an interference should and must be declared.

Applicant notes that claims of similar or broader scope to claims 26-60 have been present in applicant's application since filing of the parent application on August 25, 2000, and accordingly, applicant's request for interference is in compliance with 35 U.S.C. § 135(b)(1) and b(2).

#### VII. Conclusion

An early and favorable action declaring an interference between the present application and the Humes application is respectfully requested.

Respectfully submitted,



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